



**SEVENTEENTH JUDICIAL CIRCUIT
CASS COUNTY, MISSOURI**

**From The Office Of State Auditor
Claire McCaskill**

**Report No. 2004-32
May 4, 2004
www.auditor.mo.gov**

AUDIT REPORT



Office Of The
State Auditor Of Missouri
Claire McCaskill

May 2004

The following findings were noted as a result of an audit conducted by our office of the Seventeenth Judicial Circuit, Cass County, Missouri.

The Cass County Circuit Clerk prepares and submits billings for incarceration costs utilizing the Sheriff's certification of the number of days incarcerated. In cases where the court retained the option of granting probation after 120 days, the procedure is to have the probation officer enforce collection and payment to the court. Four of the ten cases selected involved defendants granted probation after 120 days, but no payment of costs were made through probation, and three of these four defendants had their probation revoked and were sent back to prison. Incarceration costs for these four defendants totaled approximately \$3,000, and two of these cases have exceeded the two-year limit for billing the state, resulting in lost revenue to the county of approximately \$1,170. These practices do not appear beneficial to the county since reimbursement of the incarceration costs could be requested as soon as the certification is received from the Sheriff. Other Circuit Clerk's indicated they bill the state for incarceration costs as soon as the certification of days incarcerated is received from the Sheriff. In addition, we noted four instances where incarceration costs, totaling approximately \$8,800, were underbilled to the state.

A listing of accrued costs owed to the court is not maintained by the Circuit Clerk and monitoring procedures related to accrued costs are not adequate. Additionally, the court has not made adequate efforts to review the status of old open items. The December 31, 2003, open items listing includes approximately 1,700 entries and totaled over \$1,140,000. These conditions were also noted in our prior report.

The Associate Division Clerk has not established procedures to routinely follow up on outstanding checks and adequate records are not maintained to account for the individual traffic tickets issued and their ultimate disposition. These conditions were also noted in our prior report. Also, the court has not made adequate efforts to review the status of old open items, and deviations from the established fine and costs schedule for cases paid through the mail are not approved by the Associate Circuit Judge.

An average of approximately \$44,000 was spent annually on law books, publications, and software for the law library during the three years ended December 31, 2003. Perpetual inventory records of the law library are not maintained and an annual physical inventory of the law library is not performed. In addition, approval of expenditures from the Law Library Fund is not documented by the Presiding Circuit Judge. Similar conditions were also noted in our prior report.

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YELLOW SHEET

SEVENTEENTH JUDICIAL CIRCUIT
CASS COUNTY, MISSOURI

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STATE AUDITOR'S REPORT



CLAIRE C. McCASKILL
Missouri State Auditor

Presiding Judge and Court en banc
and
Circuit Clerk of the
Seventeenth Judicial Circuit
Cass County, Missouri

We have audited certain operations of the Seventeenth Judicial Circuit, Cass County, Missouri. The scope of this audit included, but was not necessarily limited to, the three years ended December 31, 2003. The objectives of this audit were to:

1. Review internal controls over significant financial functions.
2. Review compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and operations.

Our methodology to accomplish these objectives included reviewing written policies, financial records, and other pertinent documents; interviewing various personnel of the judicial circuit, as well as certain external parties; and testing selected transactions.

In addition, we obtained an understanding of internal controls significant to the audit objectives and considered whether specific controls have been properly designed and placed in operation. We also performed tests of certain controls to obtain evidence regarding the effectiveness of their design and operation. However, providing an opinion on internal controls was not an objective of our audit and accordingly, we do not express such an opinion.

We also obtained an understanding of legal provisions significant to the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contract, grant agreement, or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting significant instances of noncompliance with the provisions. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion.

Our audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such procedures as we considered necessary in the circumstances.

The accompanying History, Organization, and Statistical Information is presented for informational purposes. This information was obtained from the judicial circuit's management, the Office of State Courts Administrator, and Cass County and was not subjected to the procedures applied in the audit of the judicial circuit.

The accompanying Management Advisory Report presents our findings arising from our audit of the Seventeenth Judicial Circuit, Cass County, Missouri.

A handwritten signature in black ink, reading "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" and last name "McCaskill" clearly distinguishable.

Claire McCaskill
State Auditor

January 22, 2004 (fieldwork completion date)

The following auditors participated in the preparation of this report:

Director of Audits:	Kenneth W. Kuster, CPA
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MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

SEVENTEENTH JUDICIAL CIRCUIT
CASS COUNTY, MISSOURI
MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

1.	Circuit Clerk's Accounting Controls and Procedures
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- A. Some criminal cost billings were not prepared on a timely basis, some were not prepared at all, and at least one was inaccurate. The Circuit Clerk prepares and submits billings for incarceration costs utilizing the Sheriff's certification of the number of days incarcerated. Procedures for collecting incarceration costs for defendants where the court retained the option of granting probation after 120 days, pursuant to Section 559.115, RSMo 2000, is to not bill the state for those costs, but to have the probation officer enforce collection and payment to the court. Four of the ten cases selected involved defendants granted probation after 120 days, but no payments of costs were made through probation, and three of these four defendants had their probation revoked and were sent back to prison. Incarceration costs for these four defendants totaled approximately \$3,000, and two of these cases have exceeded the two-year limit for billing the state, resulting in lost revenue to the county of approximately \$1,170.

These practices do not appear beneficial to the county since reimbursement of the incarceration costs could be requested as soon as the certification is received from the Sheriff. We spoke with several other Circuit Clerk's in the state regarding their criminal cost billing procedures, and they all indicated they bill the state for incarceration costs as soon as the certification of days incarcerated is received from the Sheriff. They all indicated that if payment is received later from the defendant while they are on probation, they will send those payments to the state.

In addition, we noted four instances where incarceration costs, totaling approximately \$8,800, were underbilled to the state. The Circuit Clerk's personnel indicated they generally do not bill the state for days the defendant spends in the jail after the date of conviction, but prior to transport to the penitentiary. These days are allowable to be billed and should be included on the billings submitted to the state. Three of these four cases were underbilled for this reason and two of those have exceeded the two-year limit for billing the state, resulting in lost revenue to the county of approximately \$380. The third case, with costs totaling approximately \$150, can still be billed. Another case was underbilled by 368 days, totaling approximately \$8,270, due to an error.

To ensure criminal cost reimbursements received by the county are maximized, all allowable costs should be billed to the state in a timely manner. Section 221.105, RSMo 2000, allows the state to reimburse certain court and incarceration costs for criminal cases when the state has been rendered liable. The state is rendered liable for criminal costs when a defendant is sentenced to imprisonment

by the Department of Corrections. Section 33.120, RSMo 2000, requires all such bills to be submitted to the state's Office of Administration within two years of the date of judgment and sentence. By not billing these costs as soon as it is allowable by law, the county, in some instances, is without revenue they are entitled to for periods sometimes exceeding two years.

- B. A listing of accrued costs owed to the court is not maintained by the Circuit Clerk and monitoring procedures related to accrued costs are not adequate. When such costs occur, the Circuit Clerk's office sends a statement to the appropriate party requesting payment. No additional follow-up action is taken.

A complete and accurate listing of accrued costs would allow the Circuit Clerk to more easily review the amounts due to the court and to take appropriate steps to ensure amounts owed are collected. Inadequate procedures for the collection of accrued court costs may result in lost revenues. In addition, Section 546.870, RSMo 2000, requires the clerk to issue executions on amounts not collected at the end of each term.

- C. The court has not made adequate efforts to review the status of old open items. The Circuit Clerk's office collects court costs for each case filed in the Circuit Division. The December 31, 2003, open items listing includes approximately 1,700 entries and totaled over \$1,140,000. Approximately 300 of these cases originated prior to 1999 with some cases dating as far back as the 1980's. Of the 30 cases reviewed, we found 18 which had monies, totaling approximately \$85,200 that should have been disbursed to the state, county, or refunded to the defendant. Four of these cases were condemnation suits, totaling approximately \$35,000, which have had no activity for more than a year. We noted one case in which a partial payment of \$40,000, for restitution and penalties, had been received in 1999 but is still being held by the court. We also found one instance in which a bond was refunded even though court costs were still unpaid.

If it appears unlikely the remaining amounts owed will be collected, a court order should be obtained to allow the balance to be prorated among the various costs. Attorney General's Opinion No. 26, 1973 to Osborne, concluded that "If, when liability has been established, accrued costs cannot be collected in full, charges not having any statutory priority or not allocated under court rule should be prorated."

Old inactive case balances increase the volume of cases which must be monitored and controlled, putting a greater burden on limited personnel resources. In addition, failure to prorate available monies, when it is unlikely the balance will be collected, deprives the state and county of the use of those monies. If the payees cannot be located, the amount should be disbursed to the State's Unclaimed Property Section as required by Section 447.595, RSMo 2000.

Conditions similar to parts B and C were also noted in our prior report.

WE RECOMMEND the Circuit Clerk:

- A. Ensure all criminal costs are accurately billed to the state on a timely basis.
- B. Maintain a listing of accrued costs and establish procedures to routinely follow-up and pursue timely collection.
- C. Review the older cases, along with the Circuit Judge, and determine the appropriate disposition of funds being held on inactive cases. Any unclaimed monies should be disposed of in accordance with state laws.

AUDITEE'S RESPONSE

The Circuit Clerk responded:

- A. *This issue has been addressed. Criminal billings, including billings to the state, have been reassigned to the criminal clerks. They have been provided with specific instructions and training. With respect to billing incarceration time up to and including the date of transport to the Department of Corrections, we have addressed this issue. Additionally, we have had a difficult time receiving incarceration time from the Cass County Sheriff. Immediate implementation of both items has taken place.*
- B. *We concur, however, we do not have the available staff to implement and maintain a complete listing of accrued costs. Our circuit is slated for Justice Information System (JIS) implementation in June of 2005; that system will maintain accrued cost information.*
- C. *This has been addressed. All clerks have been reviewing open items listings and making disbursements. Additionally, we have hired a part-time employee to help with this issue. We plan to complete this project on or before September 1, 2004.*

2. Associate Circuit Division's Procedures

- A. The Associate Division Clerk has not established procedures to routinely follow up on outstanding checks. At December 31, 2003, the Associate Division had approximately \$2,630 in old outstanding checks that were over a year old.

Procedures should be adopted to routinely follow up on old outstanding checks. If the payees cannot be located, various statutory provisions provide for the disposition of unclaimed monies.

- B. The court has not made adequate efforts to review the status of old open items. The December 31, 2003, open item listing includes approximately 400 entries, totaling over \$150,000, with approximately 50 cases originating prior to 1999. In our review of 10 cases on the open items listing, we found two bonds which had

not been claimed for over two years and no efforts have been made to refund these bonds. We also noted three cases in which checks to refund balances were returned as undeliverable to the court and no follow up action was taken. Sections 447.500 through 447.595, RSMo 2000 (which relate to unclaimed property) should be used to disburse any unidentified or unclaimed monies.

If it appears unlikely the remaining amounts owed will be collected, a court order should be obtained to allow the balance to be prorated among the various costs. As noted above, Attorney General's Opinion No. 26, 1973 to Osborne, allowed for distribution of accrued costs, on a prorated basis, that cannot be collected in full.

Old inactive case balances increase the volume of cases which must be monitored and controlled, putting a greater burden on limited personnel resources. In addition, failure to prorate available monies, when it is unlikely the balance will be collected, deprives the state and county of the use of those monies.

- C. Deviations from the established fine and costs schedule for cases paid through the mail are not approved by the Associate Circuit Judge. The Associate Division's policy is that small overpayments are not refunded because of staffing shortages and the time and expense of issuing small dollar refunds. While the Associate Circuit Judge indicates that he approves every such instance, his approval is not documented.

To ensure fines and court costs are properly collected, payment should be collected in accordance with established fines and court costs schedules. Any exceptions should be documented and approved by the judge.

- D. The Associate Circuit Judge does not always sign the case files for traffic tickets after case dispositions are recorded. To ensure the proper disposition of all cases has been entered in the court record, the Associate Circuit Judge should sign the case files to indicate approval of the recorded disposition.
- E. Adequate records are not maintained to account for the individual traffic tickets issued and their ultimate disposition. The Sheriff's department maintains a computerized log of the tickets written by each deputy; however, the log is not sorted by ticket number.

Without proper accounting of the numerical sequence and ultimate disposition of traffic tickets, the Sheriff's department, Prosecuting Attorney's office, and Associate Circuit Division cannot be assured that all tickets issued by the Sheriff's department are properly submitted to the court for processing. A log listing the ticket book, each ticket number, the date issued, offense, and the violator's name would enable the Sheriff's department, Prosecuting Attorney, and Associate Circuit Division to ensure all tickets issued have been submitted to the court for processing, properly voided, or not prosecuted. In addition, a record should be

maintained of the ultimate disposition of each ticket to ensure all documents have been accounted for properly.

Conditions similar to parts A and E were also noted in our prior report.

WE RECOMMEND the Associate Circuit Judge:

- A. Attempt to resolve the old outstanding checks and establish routine procedures to investigate checks outstanding for a considerable time.
- B. Review the older cases and determine the appropriate disposition of funds being held on inactive cases. Any unclaimed monies should be disposed of in accordance with state laws.
- C. Ensure approval is documented for partial payments accepted as payments in full.
- D. Review and sign the court dockets and/or case file related to traffic tickets to ensure propriety and to document approval.
- E. Work with the Sheriff's department and the Prosecuting Attorney's office to ensure records are maintained to account for the numerical sequence of all traffic tickets issued, as well as the ultimate disposition.

AUDITEE'S RESPONSE

The Associate Circuit Judge responded:

- A. *My staff has already eliminated these outstanding checks.*
- B. *My staff will review the open items as time permits and will dispose of funds on applicable cases by December 31, 2004.*
- C. *Beginning immediately all cases will be signed off on where the payment deviates from the established fines and cost schedule. It should be noted this occurs very rarely, usually less than ten times per year.*
- D. *Agree and will sign off on all traffic cases where the defendant appears in court.*
- E. *The court does not have control of the Sheriff's Department or the Prosecuting Attorney's office. It is the duty of the Sheriff to track the issuance of traffic tickets.*

Controls over law library procedures are in need of improvement. An average of approximately \$44,000 was spent annually on law books, publications, and software for the law library during the three years ended December 31, 2003. Perpetual inventory records of the law library are not maintained and an annual physical inventory of the law library is not performed. In addition, approval of expenditures from the Law Library Fund is not documented by the Presiding Circuit Judge.

A physical inventory should be performed annually and compared to perpetual inventory records. Proper inventory procedures reduce the risk of loss, misuse, or theft of law library assets. Furthermore, to ensure all expenditures are reasonable and represent valid uses of law library funds, the Presiding Circuit Judge should document his approval of all invoices.

Similar conditions were also noted in our prior report.

WE AGAIN RECOMMEND the Presiding Circuit Judge require the law library custodian to maintain perpetual inventory records and perform an annual physical inventory of all law library materials. In addition, approval of all expenditures should be documented.

AUDITEE'S RESPONSE

The Circuit Clerk responded:

This has been implemented. We have developed an income/expense statement for the Presiding Judge to review each month and have begun an inventory of the Law Library materials. We have designated a clerk to complete the inventory project and maintain same, and have designated a member of the Cass County Bar Association to review the inventory yearly. Plans are to have the inventory completed by July 1, 2004.

FOLLOW-UP ON PRIOR AUDIT FINDINGS

SEVENTEENTH JUDICIAL CIRCUIT
CASS COUNTY, MISSOURI
FOLLOW-UP ON PRIOR AUDIT FINDINGS

In accordance with *Government Auditing Standards*, this section reports the auditor's follow-up on action taken by the Seventeenth Judicial Circuit, Cass County, Missouri, on findings in the Management Advisory Report (MAR) of our prior audit report issued for the two years ended December 31, 1996. The prior recommendations which have not been implemented, but are considered significant, are repeated in the current MAR. Although the remaining unimplemented recommendations are not repeated, the judicial circuit should consider implementing those recommendations.

1. Circuit Clerk's Accounting Controls and Procedures – Fee Account

- A. Adequate procedures to follow-up on outstanding checks had not been established.
- B. Monthly listings of open items (liabilities) were not prepared and, consequently, open items were not reconciled with cash balances.
- C.1. Collection of accrued court costs was not adequately pursued.
- 2. A record to document the total amounts due to the court was not maintained.

Recommendation:

The Circuit Clerk:

- A. Establish procedures to periodically review outstanding checks and take action to resolve any old outstanding checks on a timely basis. For those checks where payees cannot be located, the monies should be disbursed in accordance with state law.
- B. Review old cases and disburse filing fees and other fees to the state and county. In addition, monthly listings of open-items should be prepared and reconciled to the cash balance. An attempt should be made to investigate the unidentified monies and any monies remaining unidentified should be disbursed in accordance with state law.
- C.1. Implement procedures to adequately pursue the collection of accrued costs.
- 2. Establish a control account for the accrued court costs and periodically reconcile it to the defendants' accrued court cost receivable balances.

Status:

- A. Not Implemented. The number of old outstanding checks was greatly reduced from last audit, but some still exist. Although not repeated in the current report, our recommendation remains as stated above.
- B. Partially implemented. Although monthly listings of open-items are now being prepared and reconciled to the cash balance, the listing includes many old cases which should be reviewed and monies disbursed. See MAR finding number 1.
- C. Not implemented. See MAR finding number 1.

2. Circuit Clerk's Account Controls and Procedures – Child Support Account

- A. Child support monies were held in a non interest-bearing account.
- B. Delinquent child support payments were not adequately monitored.

Recommendation:

The Circuit Clerk:

- A. Invest child support monies in an interest-bearing account.
- B. Implement procedures to monitor delinquent child support payments and issue delinquent notices in accordance with state law.

Status:

These recommendations are no longer applicable. The state took over the collection of child support in 2001.

3. Associate Circuit Division's Account Controls and Procedures

- A. Adequate procedures to follow-up on outstanding checks had not been established.
- B. The method of payment was not indicated on receipt slips and, consequently, the composition of receipt slips could not be reconciled to composition of bank deposits.
- C. The correct court fees were not assessed in some instances.
- D. The proper fine amounts were not reported to the state for three cases.

- E. Neither the Sheriff's Department nor the court maintained adequate records to account for all the traffic tickets issued and their ultimate disposition.

Recommendation:

The Associate Circuit Division:

- A. Establish procedures to periodically review outstanding checks and take action to resolve any old outstanding checks on a timely basis. For those checks where payees cannot be located, the amounts should be disbursed in accordance with state law.
- B. Indicate the method of payment on all receipt slips. The composition of receipt slips issued should be reconciled to the composition of bank deposits.
- C. Ensure that all fees are assessed in accordance with state law.
- D. Ensure the proper fine amount is reported to the Missouri State Highway Patrol.
- E. Work with the Sheriff's Department to ensure a log listing each ticket number, the date issued, offense, violator's name, and ultimate disposition is maintained to ensure all traffic tickets have been accounted for properly.

Status:

A&E. Not implemented. See MAR finding number 2.

B, C,
&D. Implemented.

4. Law Library

- A. Approval of expenditures was not properly documented.
- B. Some books were not stamped as being property of the county law library.
- C. Perpetual inventory records were not maintained.
- D. Invoices were not paid timely.

Recommendation:

The Presiding Circuit Judge:

- A. Document his review and approval of all expenditures.

- B. Require all books be stamped "Property of Cass County Law Library."
- C. Require that perpetual inventory records be maintained and an annual physical inventory of all law library materials be performed.
- D. Ensure all invoices are paid in a timely manner.

Status:

A&C. Not implemented. See MAR finding number 3.

B. Not implemented. While a scan of the law books indicates the new books are being stamped, older books have still not been stamped. Although not repeated in the current report, our recommendation remains as stated above.

D. Implemented.

5. C.B. Fitzgerald Trust Fund

The trust agreement for this fund which would provide the terms for the trust could not be located.

Recommendation:

The Presiding Circuit Judge attempt to locate the trust agreement for this trust fund, and if one cannot be located, determine the proper disposition of the funds.

Status:

Implemented. In May 1998, the Presiding Circuit Judge issued a court order investing the Juvenile Judge for the Circuit Court of Johnson County to have the exclusive right to dispose of the monies in the trust fund.

HISTORY, ORGANIZATION, AND
STATISTICAL INFORMATION

SEVENTEENTH JUDICIAL CIRCUIT
CASS COUNTY, MISSOURI
HISTORY, ORGANIZATION, AND
STATISTICAL INFORMATION

Organization

The Seventeenth Judicial Circuit consists of Cass County as well as Johnson County.

The Seventeenth Judicial Circuit consists of two circuit judges and four associate circuit judges. The circuit judges hear cases throughout the circuit. One judge, elected biennially by secret ballot of the circuit and associate judges, serves as the presiding judge and, therefore is responsible for the administration of the circuit. Of the four associate judges, two are located in Cass County and preside over the Associate Circuit Court (Division III) and the Probate Division Court (Division IV). The other two associate circuit judges are located in Johnson County.

In addition to the judges, the Seventeenth Judicial Circuit, Cass County personnel include a circuit clerk, an associate division clerk, a probate division clerk, fourteen deputy clerks, a juvenile officer, six deputy juvenile officers, two court reporters, two juvenile office secretaries, and approximately sixteen juvenile detention center employees.

Circuit personnel located in Johnson County are not included in the scope of this audit, but are reported on separately.

Operating Costs

The operating expenses for the Circuit Division, the Associate Circuit Division, the Probate Division, the juvenile office, Juvenile Detention Center, the Circuit Judge, and court reporters are paid by Cass County. The salaries of all the court personnel and the juvenile office are paid by the state of Missouri. The state also pays for six of the juvenile detention center employees.

Receipts

Receipts of the Seventeenth Judicial Circuit, Cass County, were as follows:

Year Ended December 31,		
2003	2002	2001
\$ 2,457,428	3,116,923	2,501,060
12,426	14,800	27,145
<u>\$ 2,469,854</u>	<u>3,131,723</u>	<u>2,528,205</u>

Caseload and Time Standards Statistics

From the Office of State Courts Administrator Missouri Judicial Reports, caseload statistics of the filings and dispositions of the Seventeenth Judicial Circuit, Cass County, were as follows:

	Year Ended June 30,			
	2002		2001	
	Filings	Dispositions	Filings	Dispositions
Civil	3,276	3,124	3,066	3,009
Criminal	7,394	6,789	6,713	6,363
Juvenile	429	377	442	372
Probate	119	120	141	141
Total	11,218	10,410	10,362	9,885

From the Office of State Courts Administrator Missouri Judicial Report for fiscal year 2002, statistics on the compliance of the Seventeenth Judicial Circuit, Cass County, with time standards for disposition of certain types of cases were as follows:

Type of Case	Time Standard	Seventeenth Judicial Circuit Cass County, Missouri	State Total
Circuit Civil	90 % in 18 months	64 %	79 %
	98 % in 24 months	69	87
Domestic Relations	90 % in 8 months	83	83
	98 % in 12 months	88	90
Associate Civil	90 % in 6 months	99	87
	98 % in 12 months	100	96
Circuit Felony	90 % in 8 months	81	86
	98 % in 12 months	94	93
Associate Criminal	90 % in 4 months	88	75
	98 % in 6 months	95	83

Personnel

At December 31, 2003, the judges, Circuit Clerk, and Juvenile Officer of the Seventeenth Judicial Circuit, Cass County, were as follows:

Jacqueline Cook, Circuit Judge, Division I
Joseph P. Dandurand, Presiding Circuit Judge, Division II
William B. Collins, Associate Circuit Judge
Thomas M. Campbell, Associate Circuit Judge, Probate Division
Kelly Sue Elliott, Circuit Clerk
Douglas Oyer, Juvenile Officer

An organization chart follows:

SEVENTEENTH JUDICIAL CIRCUIT
CASS COUNTY, MISSOURI
ORGANIZATION CHART
DECEMBER 31, 2003

